Competition Bureau Canada
Bureau de la concurrence Canada

# Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters

Canada

This publication is not a legal document. It is intended to provide general information and is provided for convenience. To learn more, please refer to the full text of the Acts or contact the Competition Bureau.

**For information on the Competition Bureau's activities, please contact:**
Information Centre
Competition Bureau
50 Victoria Street
Gatineau QC K1A 0C9

Tel.: 819-997-4282
Toll free: 1-800-348-5358
TTY (for hearing impaired): 1-866-694-8389
Fax: 819-997-0324
Website: www.competitionbureau.gc.ca

This publication can be made available in alternative formats upon request. Contact the Competition Bureau's Information Centre at the numbers listed above.

**This publication is also available online in HTML at:**
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04358.html

**Permission to reproduce**
Except as otherwise specifically noted, the information in this publication may be reproduced, in part or in whole and by any means, without charge or further permission from the Competition Bureau provided due diligence is exercised in ensuring the accuracy of the information reproduced; that the Competition Bureau is identified as the source institution; and that the reproduction is not represented as an official version of the information reproduced, nor as having been made in affiliation with, or with the endorsement of the Competition Bureau. For permission to reproduce the information in this publication for commercial redistribution, please Apply for Crown Copyright Clearance or write to:

**Communications and Marketing Branch**
Innovation, Science and Economic Development Canada
C.D. Howe Building
235 Queen Street
Ottawa, ON Canada
K1A 0H5
Email: ISED@Canada.ca

Cat. No. lu54-34/2018E-PDF
ISSB 978-0-660-26353-3

2018-05-01

*Aussi offert en français sous le titre* Guide du Bureau de la concurrence sur la tarification et les normes de service relatives aux fusions et aux services connexes

## Preface

The Competition Bureau ("Bureau") is an independent law enforcement agency responsible for, among other things, the administration and enforcement of the *Competition Act* ("Act"). The Bureau contributes to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice.

Since November 1997, the Bureau has required the payment of fees for the following merger-related matters:

- pre-merger notification filings submitted pursuant to subsection 114(1) of the Act ("notifications");
- requests for Advance Ruling Certificates under section 102 of the Act ("ARC requests"); and
- applications for written opinions under subsection 124.1(1) of the Act regarding the applicability of Part IX (Notifiable Transactions) of the Act ("written opinions").

With the establishment of fees came challenging but attainable service standards. These service standards, which are assigned based on the complexity of the competition issues raised by a proposed transaction, have been established to provide timely and predictable merger review periods for stakeholders and to comply with Treasury Board requirements with respect to the imposition of fees.

The purpose of this Handbook is to provide guidance as to how the Bureau determines the complexity of a proposed transaction that is the subject of a notification or ARC request, and the complexity of a matter that forms the basis of a request for a written opinion. This Handbook also sets out the information required by the Bureau to commence the applicable service standard, and explains when the service standard may be paused and when it is satisfied. Finally, this Handbook provides information with respect to the payment of fees.

The Bureau may revisit certain aspects of this Handbook in light of experience and changing circumstances.

## Table of Contents


Preface ..... 3

1. Introduction ..... 5

2. Early consultation ..... 6

2.1 Overview ..... 6

2.2 Merger Notification Unit[Footnote 6] ..... 6

3. Notifications and ARC requests ..... 6

3.1 Overview ..... 6

3.2 Complexity designation ..... 7

3.3 Information required to commence the service standard ..... 8

4. Written opinions relating to Part IX of the Act ..... 11

4.1 Overview ..... 11

4.2 Complexity definitions ..... 11

5. Service standards ..... 12

5.1 Service standard periods and commencement of the service standard ..... 12

5.2 Market contacts ..... 13

5.3 Satisfaction of the service standard ..... 14

5.4 Pausing the service standard — requests for additional information ..... 14

6. Fees ..... 15

6.1 Fees ..... 15

6.2 Refund policy ..... 17

6.3 Withdrawing and re-submitting a notification ("pull and refile") ..... 17

6.4 Photocopies ..... 18

7. Review / feedback mechanisms ..... 18

8. How to contact the Competition Bureau ..... 19

# 1. Introduction

The *Competition Bureau Fees and Service Standards Policy for Mergers and Merger-Related Matters* ("Policy")[1] on which this handbook is based, is consistent with the Government's overall objective of fairness, which seeks to ensure that those who benefit most from a service should pay for it, rather than forcing all Canadians to pay through general taxation. The revised fee for merger notifications and requests for ARCs comes into effect May 1, 2018.

Following amendments to the merger provisions of the Act and the *Notifiable Transactions Regulations* ("Regulations"), updates to the existing service standards and complexity designations for mergers and merger-related matters were made and are discussed herein. Further, this Handbook clarifies what information is generally sufficient for the Bureau to assign complexity and commence the service standard.

The existence of fees and related service standards has promoted a disciplined approach to identifying and measuring the Bureau's performance. The Bureau is committed to ensuring that those who seek services, or are bound by regulatory requirements, have timely and predictable opportunities to provide input regarding fees and service standards. To ensure that stakeholders have an opportunity to provide feedback on the Policy and the Handbook, the Bureau holds public consultations every two to three years. These consultations also provide the Bureau with an opportunity to report publicly on its performance.

To request clarification with respect to the services and regulatory processes outlined in this Handbook, or to ask a question regarding a particular merger issue, please contact the Merger Notification Unit ("MNU") at:

Merger Notification Unit
Mergers Directorate, Competition Bureau
50 Victoria Street
Gatineau, Quebec K1A 0C9

Telephone: 819-997-0615
Toll-free: 1-800-348-5358
Fax: 819-994-0998
E-mail: ic.avisdefusionmergernotification.ic@canada.ca

The Bureau also offers several merger-related publications on its website[2], including the *Procedures Guide for Notifiable Transactions and Advance Ruling Certificates Under the Competition Act* ("Procedures Guide")[3] and the *Merger Review Process Guidelines*[4], which may be consulted for guidance.

[1] http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03299.html. This Policy supersedes the October 2010 Policy.
[2] http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home
[3] http://competitionbureau.gc.ca/eic/site/cb bc.nsf/eng/03302.html.
[4] http://competitionbureau.gc.ca/eic/site/cb bc.nsf/eng/03128.html

## 2. Early consultation

### 2.1 Overview

The Bureau's approach to service standards is premised on cooperation from parties and early, ongoing dialogue. The Bureau strongly encourages parties to a proposed transaction to consult with the Bureau prior to, or as soon as possible after, submitting a notification or an ARC request. Early consultation ensures that sufficient information is submitted to facilitate complexity designation and thereby trigger the commencement of the service standard period. This approach also enables the Bureau to more readily focus its investigation, minimize any requests for additional information, and complete its review in a timely manner.

For transnational mergers that give rise to competition concerns in Canada and that involve reviews by competition agencies in other jurisdictions, it is the Bureau's experience that early discussion on inter-agency cooperation is very useful. To facilitate this discussion, parties are strongly encouraged to provide foreign agencies with waivers permitting them to share information with the Bureau as early in the review process as possible.

### 2.2 Merger Notification Unit[5]

The MNU is responsible for the receipt and initial processing of notifications and ARC requests, as well as responding to requests for written opinions under section 124.1 of the Act relating to Part IX of the Act (Notifiable Transactions). The MNU also provides non-binding oral assistance regarding the application and interpretation of Part IX. Parties are encouraged to contact the MNU if they are uncertain about what information to provide to the Bureau to ensure that the service standard is commenced without delay. Parties involved in matters that raise complex fact scenarios or legal issues are encouraged to seek legal counsel.

## 3. Notifications and ARC requests

### 3.1 Overview

Service standards represent the maximum time within which the Bureau will endeavour to advise parties of the Bureau's position in respect of a proposed transaction that is the subject of a notification and/or an ARC request, assuming cooperation from the parties. As required by the Policy, these proposed transactions will be designated as "non-complex" or "complex," and assigned the corresponding service standard. The Bureau strives to ensure that its approach to merger review is as transparent as possible, and will inform parties of the complexity designation within 5 business days[6] of receipt of sufficient information to assign complexity. The complexity designation process and the information required to assign complexity, and thereby commence the applicable service standard, are described in greater detail below.

[5] For further information regarding the MNU, please consult the Procedures Guide.
[6] "business day" means any day that is not a holiday as defined in footnote 24 of this Handbook.

## 3.2 Complexity designation

### *3.2.1 The classification process*

The senior case officer responsible for assessing a transaction is also responsible for assigning complexity. The officer may consult with the Associate Deputy Commissioner, the Economic Analysis Directorate of the Bureau, market participants, and/or outside experts before assigning complexity, particularly where a transaction appears to be complex. In determining complexity, consideration will be given to factors including product market, geographic market, market shares, effective remaining competition and barriers to entry, each of which is discussed in greater detail below. To accurately assess these factors, the Bureau typically requires the information set out in Section 3.3 of this Handbook, as applicable.

When providing information regarding relevant markets and market shares, the relevant markets being analyzed for competitive effects may not necessarily correspond to the product categories or service areas established by parties in the conduct of their business activities[7]. Parties should consult the Bureau's *Merger Enforcement Guidelines* for guidance with respect to the Bureau's approach to determining relevant product and geographic markets. Where the relevant markets for competition analysis are not clear, parties are encouraged to consider alternative definitions and, to the extent possible, provide market share data (independent third party data is preferable) and other relevant information for each of these alternatives.

The Bureau will advise parties of the complexity level of a proposed transaction and the applicable service standard within 5 business days of receiving a complete notification or ARC request, provided that sufficient information has been submitted to assign complexity. Parties should ensure that sufficient information to classify the transaction is provided to the Bureau concurrently with a notification and/or ARC request. Parties with questions regarding what information should be provided to the Bureau to commence the service standard are encouraged to consult the MNU.

### *3.2.2 Non-complex mergers*

Non-complex mergers are readily identifiable by the clear absence of competition issues, and include transactions where there is no or minimal overlap between parties, assuming properly defined product and geographic markets. Minimal overlap includes a combined post-merger market share of less than 10% in any relevant market.

Transactions with a combined post-merger market share of between 10% and 35% may be considered non-complex or complex. Section 3.2.3 of this Handbook sets out a number of complicating factors and, where one or more of these factors are present, the transaction is more likely to be classified as complex. Where none of these factors are present, the transaction is more likely to be classified as non-complex. Most non-complex mergers are brought to the Bureau's attention by way of an ARC request. Between 2002and 2010, approximately 88% of proposed transactions subject to service standards were classified as non-complex.[8]

[7] See the Merger Enforcement Guidelines at paragraph 3.2.
[8] Transactions reviewed by the Bureau that are not the subject of either an ARC request or notification are not subject to service standards.

### *3.2.3 Complex mergers*

Complex mergers involve proposed transactions between competitors, or between customers and suppliers, where there are indications that the transaction may, or is likely to, create, maintain, or enhance market power, as described in the *Merger Enforcement Guidelines*. Proposed transactions, where the combined post-merger market share of the parties is potentially 35% or more, are generally classified as complex. This category also includes certain proposed transactions where the combined post-merger market share is less than 35% and one or more of the factors set out below are present.

Factors that tend to indicate a complex merger include the following:

1. the definition of relevant markets is challenging;[9]
2. the merger is between participants in a concentrated industry;
3. the post-merger incremental increase in market share is not *de minimis*;
4. the existence of barriers to entry;
5. there are few effective remaining competitors;
6. the evaluation of the effectiveness of remaining competition or the assessment of potential sources of new competition is difficult;
7. the existence of credible complaints or competitive concerns;
8. an efficiency exception or failing firm claim requires analysis; and
9. cooperation and coordination with one or more foreign competition authorities is required.

Vertical mergers may raise concerns when they increase barriers to entry or facilitate coordinated behaviour, as described in the *Merger Enforcement Guidelines*. In a proposed transaction that raises vertical concerns, factors such as the possibility of foreclosure or inequitable treatment will be considered a complicating factor that will likely result in the transaction being classified as complex.

Complex mergers require a more in-depth review than is necessary for non-complex mergers and, in some instances, may require significant analysis. Some complex cases progress to the formal inquiry stage, require the issuance of a SIR, and may require the use of formal powers under section 11 of the Act to collect information from third parties. In such instances, the review generally requires a case team comprised of Bureau officers, economists from the Economic Analysis Directorate of the Bureau, legal counsel and outside experts.

## 3.3 Information required to commence the service standard

### *3.3.1 Overview*

In the experience of the Mergers Directorate, the more comprehensive the information provided by the parties at the initial stages of a matter, the more focused and expeditious the review process becomes. This generally translates into more targeted subsequent requests for information on the part of the Bureau, and fewer, more

[9] Market definition can be challenging for many reasons, including determining the degree of substitutability among differentiated products, or assessing the boundaries of geographic markets where there are a number of plants or sales locations, etc.

focused third party contacts. Stakeholders benefit from a more timely resolution, and the Bureau has the opportunity to conduct an efficient and sufficiently thorough examination of all relevant issues.

Parties to a proposed transaction may elect to supply the information required to commence the service standard as part of an ARC request, or together with a notification in the form of a substantive competitive impact submission, often referred to as a competition brief.[10]

The Bureau is of the view that, generally, the information set out below is sufficient to commence the applicable service standard; however, the Bureau recognizes that specific information requirements may vary on a case-by-case basis. Where parties choose not to provide the information suggested below with their notification or ARC request, the Bureau is nonetheless likely to request this information or other similar information to the extent that it is relevant. Such requests for additional information will result in delays in commencing the service standard. Further, it is incumbent on parties to a merger transaction to identify potential competition issues and provide relevant information if they wish to obtain the benefit of an ARC or No-Action Letter.[11] If parties are uncertain about the information that should be provided to the Bureau, they are encouraged to consult the MNU or, where a notification or ARC request has already been submitted, with the case officers assigned to review the matter.

### *3.3.2 Non-complex mergers with no or minimal overlap*

For non-complex mergers with no or minimal overlap, the Bureau typically requires the following information, as applicable, to assign complexity:

1. a description of the proposed transaction, including the proposed consideration to be paid and received by each party (e.g. cash, assets, shares, interests);
2. the full name of each party to the proposed transaction;
3. a list of all affiliates, relevant for a competition analysis, of each party that has significant assets in Canada or significant gross revenues from sales in, from or into Canada;
4. a copy of each legal document, or the most recent draft of that document if it has not yet been executed, that will be used to implement the proposed transaction; and
5. a submission regarding relevant product and geographic market definitions, along with a detailed explanation as to why the parties believe that there are no or minimal competitive overlaps (horizontal or vertical) between the businesses of the parties, taking into consideration any:
    1. significant affiliates,[12]
    2. related businesses[13] in which a party owns any interest; and
    3. interlocking directorships.[14]

[10] The prescribed information that must be submitted with a notification is set out in section 16 of the Regulations. For further details regarding the submission of a notification or ARC request, please refer to the Procedures Guide.
[11] A No-Action Letter provides written confirmation that the Commissioner does not, at that time, intend to make an application under section 92 of the Act in respect of the proposed transaction.
[12] For purposes of determining whether an affiliate or affiliates of a party can be excluded on the basis of not being considered significant, the Bureau generally considers assets in Canada or gross revenues from sales in, from or into Canada not to be significant if they are worth $500,000 or less for each excluded affiliate and the total value of all of the excluded affiliates is $1,000,000 or less.
[13] This includes any corporation, trust, partnership, joint venture or other business in which the party owns a significant interest or that has a significant interest in the party.

### *3.3.3 Non-complex mergers with moderate overlap*

For non-complex mergers with moderate overlap, the Bureau typically requires the following information, as applicable, to assign complexity:

1. the information required by section 16 of the Regulations;
2. a submission regarding relevant product and geographic market definitions, identification of all competitive overlaps (horizontal or vertical) between the businesses of the parties, taking into consideration any:
    1. significant affiliates,[15]
    2. related businesses[16] in which a party owns any interest; and
    3. interlocking directorships,[17] and a detailed explanation as to why the parties believe there are no competition issues arising as a result of the proposed transaction;

3. for each relevant product, in each relevant geographic market for the most recently completed year:
    1. independent third party data with respect to:
        1. the total annual dollar sales, unit sales and capacity; and
        2. market shares[18] for each party and each competitor; and
    2. if independent third party data is not available, the dollar sales, unit sales and capacity for each party and estimated market shares for each party and competitor, with an explanation of the basis for the estimates;
4. a list of the parties' respective competitors; and
5. all co-production, joint venture or strategic alliance agreements with a competitor in relation to any relevant product and having an effect on a relevant geographic market.

### *3.3.4 Complex and very complex mergers*

For complex mergers, the Bureau typically requires the following information, as applicable, to assign complexity:

1. the information listed in section 3.3.3 of this Handbook for non-complex mergers with moderate overlap;
2. in respect of each party and each of its significant affiliates, for each relevant product, in each relevant geographic market, all marketing, business and strategic plans, and similar documents, that were prepared or received by an officer or director[19] of the corporation; or, in the case of an unincorporated entity, an individual who serves in a similar capacity, and that

[14] Relevant interlocking directorships include interlocking directorships between and among the merging parties or their affiliates and their competitors, customers and suppliers.
[15] See footnote 13.
[16] See footnote 14.
[17] See footnote 15.
[18] Expressed in terms of dollar sales, unit sales, and capacity.
[19] This includes all documents prepared or received by an officer or director in a position that is either (1) provided for in the bylaws or articles of the company or (2) appointed by the Board (or persons exercising similar functions in non-corporate entities).

have been implemented in Canada within the two years before the date of the notification or ARC request[20] or that are to be implemented in Canada;
3. in respect of each party and each of its significant affiliates, all offering memorandum (or documents that served that function) evaluating or analysing the proposed transaction with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into new products or geographic regions produced within the two years before the date of the notification or ARC request;
4. all non-compete agreements and other types of agreements, arrangements or licences the parties may have with third parties that would have an impact on the ability of actual or potential competitors to compete with the parties now or in the future;
5. submissions regarding any relevant factors listed in section 93 of the Act; and
6. a detailed explanation as to how prices are determined for each relevant product in each relevant geographic market.

# 4. Written opinions relating to Part IX of the Act

## 4.1 Overview

Guidance regarding the applicability or interpretation of Part IX of the Act can be obtained by requesting a binding written opinion from the Commissioner under section 124.1 of the Act. Such requests should be directed to the MNU, and it is recommended that parties contact the MNU prior to submitting a request. Written opinions, which take into account previous written opinions, relevant jurisprudence, current policies and enforcement guidance, are binding on the Commissioner as long as the facts of the matter remain substantially unchanged and the transaction is carried out substantially as proposed.

The Bureau will not provide a written opinion under section 124.1 that requests an assessment of the competitive effects of a proposed transaction under the merger provisions of the Act. Parties to a proposed transaction seeking this kind of assessment, regardless of whether the transaction is notifiable, must submit a notification or an ARC request.

A request for a written opinion regarding the applicability or interpretation of Part IX of the Act should clearly state the question and provide, among other things:

1. a description of the parties;
2. a description of the proposed transaction, broken down by its component steps; and
3. all material facts relevant to the request.

## 4.2 Complexity definitions

### *4.2.1 Non-complex written opinions*

Non-complex written opinions regarding the applicability or interpretation of Part IX of the Act, or the Regulations, typically involve established Bureau policy and/or jurisprudence that would enable the Bureau to readily formulate an opinion.

[20] Which shall be the date that the notification or ARC request has been determined to be complete by the MNU.

#### *4.2.2 Complex written opinions*

Complex written opinions regarding the applicability or interpretation of Part IX of the Act, or the Regulations, typically involve novel issues and, consequently, no established Bureau policy, procedures, and/or jurisprudence on the subject.

#### *4.2.3 Complexity designation*

Upon receipt of sufficient information, parties will be informed within 5 business days of the complexity level and applicable service standard.

# 5. Service standards

## 5.1 Service standard periods and commencement of the service standard

Service standards represent the maximum time within which the Bureau will endeavour to advise parties of the Bureau's position in respect of a particular transaction assuming cooperation from the parties. The Bureau aims to provide a response to notifications, ARC requests and requests for written opinions within the service standard periods, which are based on calendar days, set out in Table 1 below. The Bureau's obligation to comply with service standards is contingent upon cooperation from the parties during the course of an examination.

For non-complex mergers, the service standard is 14 calendar days, commencing the day a complete notification or ARC request is received by the Commissioner,[21] assuming sufficient information is provided with the notification or ARC request to assign complexity.

For complex mergers, the service standard is 45 calendar days, commencing the day on which a complete notification or ARC request is received by the Commissioner, assuming sufficient information is provided with the notification or ARC request to assign complexity. However, where a SIR is issued, the service standard is 30 calendar days and commences the day on which the Commissioner has received a complete response to the SIR from all SIR recipients. The service standard for complex mergers that are subject to a notification will, in all events, better align with the statutory waiting period, provided parties submit sufficient information to designate complexity with the notification and the service standard is not paused. Where a SIR is issued, the service standard and statutory waiting period will be directly aligned.[22] In the case of a proposed transaction to which subsection 114(3) of the Act applies ("unsolicited bid"), the service standard will commence when all parties other than the target corporation have complied with the applicable requirements above.

For written opinions, the service standard is 14 calendar days for non-complex matters and 28 calendar days for complex matters, commencing the day on which sufficient information has been received by the Commissioner to assign complexity.

[21] The Commissioner will receive notifications and ARC requests during business hours on any day that is not a holiday, as set out in footnote 24 of this Handbook.

[22] Where all parties have certified compliance with a SIR and the Commissioner does not dispute compliance, the applicable service standard will not be paused.

Where a service standard ends on a holiday,[23] it will be deemed to end on the next day that is not a holiday to align with the treatment of statutory waiting periods that end on a holiday.

| Table 1: Service standards for notifications, ARC requests and written opinions | | | |
|---|---|---|---|
| | **Service or Regulatory Process** | **Service Standard (calendar days)** | **Commencement of Service Standard*** |
| * In the case of an unsolicited bid under subsection 114(3), the service standard will commence when all parties other than the target corporation have complied with the applicable requirements. | | | |
| **Merger Notification Filings and ARC Requests** | **Non-complex** | 14 days | The day on which sufficient information has been received by the Commissioner to assign complexity. See the information set out in sections 3.3.2 and 3.3.3 of this Handbook. |
| | **Complex** | 45 days, except where a SIR is issued, in which case it shall be 30 days | The day on which sufficient information has been received by the Commissioner to assign complexity; or where a SIR is issued, the day on which the information requested in the SIR has been received by the Commissioner from all SIR recipients. See the information set out in section 3.3.4 of this Handbook. |
| **Part IX Written Opinions** | **Non-complex** | 14 days | The day on which sufficient information has been received by the Commissioner to assign complexity. See the information set out in section 4.1 of this Handbook. |
| | **Complex** | 28 days | |

## 5.2 Market contacts

It is standard practice in merger reviews for the Bureau to communicate with market participants, including customers, suppliers, and competitors of the merging parties. Even for a non-complex merger with no or minimal overlap, unless it is very clear that there is no need to go to the market, the Bureau will make at least some market contacts. The Bureau must be in a position to obtain information from market participants to properly assess a proposed transaction, including verification of the information supplied by the parties. The applicable service standard or statutory waiting period will not commence until such time as the Bureau is able to conduct market contacts.

[23] As specified in the Procedures Guide, "holiday" means any of the following days: Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Victoria Day, Quebec National Holiday (June 24th), Canada Day, Labour Day, Thanksgiving, Remembrance Day, Christmas Day and Boxing Day. Furthermore, if New Year's Day, June 24th or Canada Day fall on a Sunday, the following Monday is considered to be a holiday.

In all events, on receipt of a notification that complies with statutory requirements[24] and thereby triggers the statutory waiting period, the Bureau will continue its practice of making market contacts if and when the Bureau considers it necessary. Notice will not be given to parties that the Bureau intends to commence market contacts, as confirmation from the Bureau that a notification complies with statutory requirements, and that the statutory waiting period has commenced, constitutes notice to the merging parties that market contacts will be made, if and as necessary. Parties that intend to submit a notification, but would like to have market contacts deferred, may consider submitting a draft notification that does not meet the statutory requirements. Subject to the Commissioner's obligations under the Act, the Bureau will normally agree to defer making market contacts as long as there would be sufficient time before closing to make necessary contacts and parties have not triggered a statutory waiting period with the submission of a complete notification. In this situation, parties must appreciate that the statutory waiting period and the applicable service standard will not commence until the statutory requirements and the requirements in this Handbook, respectively, are satisfied. Where the Bureau decides not to defer making market contacts, it will first notify the parties.

## 5.3 Satisfaction of the service standard

The service that is the subject of the service standard is considered to have been provided when the parties are either:

1. issued an ARC or a No-Action Letter; or
2. advised that, without a remedy, the proposed transaction is likely to prevent or lessen competition substantially.[25] The time devoted to discussions or negotiations aimed at resolving issues, the preparations required for proceedings before the Competition Tribunal ("Tribunal"), and the time required to conduct proceedings before the Tribunal are not included within the service standards.

For written opinions, the service is provided when the opinion has been mailed to the applicant and/or the party receives oral confirmation from the MNU followed by the written response.

## 5.4 Pausing the service standard — requests for additional information

In the vast majority of non-complex mergers, the information requirements set out in this Handbook will not only be sufficient for the Bureau to commence the service standard, but also to complete its assessment of a proposed transaction; however, depending on the specific circumstances of the case, and certainly for more complex mergers, the Bureau may require additional information from the parties in order to complete its review. For less complex mergers, or complex mergers where the Bureau requires additional information to determine the necessity or scope of a SIR, such additional information will generally be sought on a voluntary

[24] Please refer to the Procedures Guide.

[25] In situations where parties approach the Bureau with a proposed remedy, the Bureau will nonetheless complete its analysis to determine whether the proposed transaction is likely to prevent or lessen competition substantially. Accordingly, the service standard will have been met in the same circumstances as described above.

basis. Alternatively, the parties and the Bureau may have an understanding (as may be embodied in a timing agreement)[26] that:

1. the Bureau is continuing its review beyond the expiry of any applicable statutory waiting period;
2. the parties will work cooperatively with the Bureau to address additional information requests from the Bureau; and
3. the parties will not close the transaction for an agreed-upon period of time to allow the Bureau to complete its review.

Where the Bureau has made a written request for additional information from one or more of the parties to a proposed transaction, or from a party requesting a written opinion after the commencement of the service standard period, and such additional information is not received within the response time set out in Table 2 below, the Bureau may, on the following day, pause the service standard period. Upon receipt of the information, the service standard period will resume. Parties will be notified in writing when the service standard period has been paused and when the service standard period has resumed, together with the new service standard end date. Table 2 sets out the maximum number of business days within which a response to an information request must be received to avoid having the applicable service standard paused.

Table 2: Period within which parties must respond to information requests

| | Service or Regulatory Process | Response Time* |
|---|---|---|
| * Response time is calculated in business days. | | |
| **Merger Notification Filings and ARC Requests** | **Non-complex** | 3 days |
| | **Complex** | 5 days |
| **Part IX Written Opinions** | **Non-complex** | 3 days |
| | **Complex** | 5 days |

# 6. Fees

## 6.1 Fees

Fees for notifications and ARC requests should be submitted at the time the request or filing is made.[27] In the case of an ARC request, the person making the request is responsible for payment. In the case of a notification,

[26] Pursuant to section 5 of the Treasury Board Policy on Service Standards for External Fees, where parties enter into a formal timing agreement with the Bureau that stipulates a service standard (or some equivalent provision), the service standards set out in the Handbook are not applicable. For more information regarding timing agreements, please refer to the Merger Review Process Guidelines.

the notifying parties should pay the fee. However, while the parties are free to make their own arrangements as to payment, the Bureau considers all notifying parties to be jointly and severally liable.[28]

Fees for written opinions should be submitted at the time the application is made. The person making the request is responsible for payment. Only one fee applies to a written opinion that might involve the review of multiple sections of the Act. The Bureau will continue to charge $50 to charitable organizations.[29]

Payments may be made by wire transfer[30] or by cheque payable to the Receiver General for Canada. Written opinions are subject to the federal and provincial taxes indicated in Table 3 below.

*Note that the fee for notifications and ARC Requests is subject to an annual inflation adjustment, announced annually by the Bureau.*

Table 3: Fees and applicable taxes[31] for merger notification filings, ARC requests and written opinions

| Service or Regulatory Process | Notification[32] | ARC Request | Written Opinion |
|---|---|---|---|
| **Québec** | $72,000.00 | $72,000.00 | $5,000.00 + GST ($250.00) + QST ($498.75)<br>Total = $5,748.75 |
| **Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island** | $72,000.00 | $72,000.00 | $5,000 + HST ($750.00)<br>Total= $5,750.00 |
| **Ontario** | $72,000.00 | $72,000.00 | $5,000.00 + HST ($650.00)<br>Total = $5,650.00 |
| **British Columbia** | $72,000.00 | $72,000.00 | $5,000.00 + GST ($250.00) + PST ($350.00)<br>Total = $5,600.00 |
| **Saskatchewan** | $72,000.00 | $72,000.00 | $5,000.00 + GST ($250.00) + PST ($300.00) |

[27] The failure to provide payment with a notification or ARC request will not affect the commencement of the service standard or the statutory waiting period.
[28] Except where a party is required to notify pursuant to section 114(3), in which case, that party is not liable for the payment of the fee.
[29] The Income Tax Act's definition of a charitable organization will be used to determine the applicability of this exception.
[30] For further information regarding wire transfers, parties should contact the MNU.
[31] Only Canadian residents pay Canadian taxes, which are current to the date of publication of this Handbook.
[32] Where both a notification and an ARC request are submitted with respect to the same proposed transaction, only one fee applies.

| | | | |
|---|---|---|---|
| | | | Total = $5,550.00 |
| **Manitoba** | $72,000.00 | $72,000.00 | $5,000.00 + GST ($250.00) + PST ($400.00)<br>Total = $5,650.00 |
| **Alberta and Territories** | $72,000.00 | $72,000.00 | $5,000.00 + GST ($250.00)<br>Total = $5,250.00 |

## 6.2 Refund policy

Upon written request by the party who submitted the fee, refunds will be provided where:

1. a notification is withdrawn within two business days of receipt by the Bureau;
2. an ARC request is withdrawn within two business days of its receipt by the Bureau, if the Bureau has not issued an ARC or a No-Action Letter;
3. both a notification and an ARC request are submitted in respect of the same transaction, and both the notification and the ARC request are withdrawn within two business days of receipt by the Bureau of the earlier of the notification or ARC request;
4. the Bureau exercises its discretion to not provide a written opinion within fourteen days of receipt of the written opinion request;
5. the request for a written opinion is withdrawn within two business days of receipt of the request by the Bureau; or
6. the Bureau identifies or is notified of an over-payment within one year of the date the notification, ARC request or written opinion request was received by the Bureau. In these cases, the refund will only apply to the over-payment.

## 6.3 Withdrawing and re-submitting a notification ("pull and refile")

If, during the initial waiting period under subsection 114(1) of the Act, a notification is withdrawn more than two business days after it was initially received and the parties subsequently resubmit a notification in respect of the same proposed transaction ("Subsequent Notification"), no fee will be required for the Subsequent Notification if the following conditions are met:

1. the Subsequent Notification, specifically as it relates to the prescribed information pursuant to clause 16(1)(*c*)(iv)(A) and paragraph 16(1)(*d*) of the Regulations, is current as of the date it is received by the Bureau;
2. the Subsequent Notification is certified pursuant to section 118 of the Act;
3. the Subsequent Notification is received by the Bureau within five business days of the initial notification having been withdrawn;
4. there has been no material change in respect of the proposed transaction; and
5. it is the first Subsequent Notification.

If these conditions are not met, the Subsequent Notification will be considered a fresh notification that is subject to the applicable fee and service standards. Where the above conditions are met, the service standard will, regardless of whether an ARC request has also been received in respect of the same transaction, recommence when the Subsequent Notification is received, assuming it meets the criteria set out above, to best align the service standard period with the statutory waiting period.

### 6.4 Photocopies

Fees for photocopies apply to requests for copying services made to the Bureau. Payments may be made by VISA, MasterCard, wire transfer[33] or by cheque payable to the Receiver General for Canada. Photocopies will be subject to a fee of $0.25 per page and are subject to the federal and provincial taxes set out in Table 4. The fee is payable once the work has been completed.

Table 4: Fees and applicable taxes[34] for photocopies

| Service or Regulatory Process | Photocopies |
|---|---|
| **Québec** | $0.25 + GST ($0.01) + QST ($0.03)<br>Total = $0.29 per page |
| **Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island** | $0.25 + HST ($0.04)<br>Total = $0.29 per page |
| **Ontario** | $0.25 + HST ($0.03)<br>Total = $0.28 per page |
| **British Columbia** | $0.25 + GST ($0.01) + PST ($0.02)<br>Total = $0.28 per page |
| **Saskatchewan** | $0.25 + GST ($0.01) + PST ($0.02)<br>Total = $0.28 per page |
| **Manitoba** | $0.25 + GST ($0.01) + PST ($0.02)<br>Total = $0.28 per page |
| **Alberta and Territories** | $0.25 + GST ($0.01)<br>Total = $0.26 per page |

## 7. Review / feedback mechanisms

Parties submitting a notification, ARC request, or written opinion request are invited to provide feedback to the Bureau by completing the brief evaluation leaflet enclosed with each response to a request for service.

[33] For further information regarding wire transfers, parties should contact the MNU.
[34] Only Canadian residents pay Canadian taxes, which are current to the date of publication of this Handbook.

Completed leaflets should be mailed to the Bureau's Corporate Services Branch, which prepares reports for the Mergers Directorate to ensure the anonymity of the respondents' feedback to the Bureau.

Complaints regarding services and regulatory processes for which fees and service standards apply can be directed to the Executive Director, Corporate Services Branch. The Executive Director will examine the matter and will provide feedback to the complainant.

Contact information for the Executive Director, Corporate Services Branch, is:

Ana Maia
Executive Director, Corporate Service Branch

Competition Bureau
50 Victoria Street
Gatineau, Quebec K1A 0C9
Phone: 819-997-3763
Email: ana.maia@canada.ca
Facsimile: 819-953-1877

On application, any resolution deemed by the complainant to be unsatisfactory will be further investigated by the Commissioner. Complainants will receive feedback and information regarding any subsequent resolutions or decisions relating to the original complaint.

Contact information for the Commissioner is:

Commissioner of Competition
Competition Bureau
50 Victoria Street
Gatineau, Quebec K1A 0C9

Telephone: 819-997-5300
Facsimile: 819-953-5013

All complaints will be handled in the strictest confidence.

## 8. How to contact the Competition Bureau

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, the *Precious Metals Marking Act* or the program of written opinions, or to file a complaint under any of these acts should contact the Competition Bureau's Information Centre:

**Website**

www.competitionbureau.gc.ca

**Address**

Information Centre
Competition Bureau
50 Victoria Street
Gatineau, Quebec K1A 0C9

**Telephone**

Toll-free: 1-800-348-5358
National Capital Region: 819-997-4282
TTY (for hearing impaired): 1-866-694-8389

**Facsimile**

819-997-0324